IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4086 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHIBEN BHIKHABHAI & 5 - Petitioner(s)

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR - Respondent(s)

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Appearance :

MR AB MUNSHI for Petitioner(s) : 1 - 6.
MR SIRAJ GORI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the order dated 23rd July 1986 as well the order dated 14th July 1988 both passed by the Urban Land Ceiling Tribunal.

2. Short facts leading to the present petition can be noted at this stage. The petitioners are the heirs of one Bhikhabhai Dwarkadas Patel. Bhikhabhai Dwarkadas Patel as owner of land situated in Bajva village of Vadodara district had filed a declaration under section 6(1) the Urban Land (Ceiling & Regulation) Act, (hereinafter to be referred to as “the said Act”). Bhikhabhai owned total 13050 sq. meters of land in industrial zone of Bajva. The Competent Authority by his order dated 21.12.82 permitted Bhikhabhai to retain 1500 sq. meters of land and declared the remaining land i.e. 11550 sq. meters of land as excess vacant land. Bhikhabhai filed an appeal against the order passed by the Competent Authority. His appeal was dismissed on 23.7.86 mainly on the ground of delay and laches. In the said order, the Tribunal was pleased to observe that the proceedings were taken right upto the issuance of notice under section 10(5) of the said Act for taking possession. Considering the substantial time consumed by the appellant in filing the appeal, the same came to be dismissed. No further proceedings were carried against the said order either by Bhikhabhai or any of the petitioners. It is stated that Bhikhabhai expired some time in the year 1986.

The present petitioners thereafter filed a fresh appeal before the Tribunal which also came to be rejected by an order dated 14.7.88. The petitioners therefore filed the present petition challenging the order dated 14.7.88 passed by the Urban Land Ceiling Tribunal. The petitioners have also prayed for quashing and setting aside the order passed by the Competent Authority on 21.12.82 and that passed by the Tribunal on 23.7.86.

3. At one stage, the present petition was disposed of holding that the proceedings have abated in view of the Urban Land (Ceiling & Regulation) Repeal Act. However, subsequently, in a Letters Patent Appeal filed by the State Government, the proceedings came to be remanded.

4. An affidavit in reply has been filed on behalf of the State Government in which it is contended, inter alia, that after the order was passed by the Competent Authority, notification under section 10(1) of the said Act was issued on 29th July 1983 and the same was published in the official gazette on 18.8.83, notification under section 10(3) of the said Act was issued on 31.5.84 and was published in the gazette on 28.6.84 and notice under section 10(5) of the said Act was issued calling upon the holders of the land to hand

over the vacant possession. This notice was dated 27.7.84 and the possession of the land in question was taken over by the State Government on 21.5.85 by drawing panchnama in this regard. Along with the affidavit in reply, copies of notifications and notice under section 10(5) of the said Act and panchnama of having taken the possession have been produced. Despite sufficient time having been granted to the petitioners, affidavit in rejoinder has not been filed to the reply affidavit filed by the State Government controverting the above mentioned factual averments.

5. The factual position that would, therefore, emerge is that starting from notification 10(1) of the said Act being issued on 18.8.83, final step for taking over the possession was taken when the State Government took possession of the land in question in presence of panch witnesses on 21.5.85. Thus when Bhikhabhai filed appeal before the Tribunal, the possession of the land was already taken over by the State Government. His appeal eventually came to be dismissed mainly on the ground of delay and laches by order dated 23.7.86 and Bhikhabhai has never challenged the said order during his life time. Even after his death, his heirs did not take any further proceedings for challenging the order

passed by the Appellate Tribunal. Instead, the petitioners who are heirs of deceased Bhikhabhai have filed a separate appeal before the Tribunal. It was primarily contended that they were co-parceners of Hindu Undivided Family and that therefore they also had ownership right over the land in question. The plea of the petitioners was rejected primarily on the ground of delay. It is this order passed by the Tribunal on 14.7.88 that is the subject matter of the present petition. Though incidentally, the petitioners have also challenged the order passed by the Competent Authority on 21.12.82 and the order passed by the Tribunal on 23.7.86, the main thrust of the petition is directed against the subsequent order passed by the Tribunal on 14.7.88.

6. I do not find that any jurisdictional error or even a legal error had been committed by the Tribunal while rejecting the appeal filed by the petitioners. Firstly, the Competent Authority declared 11550 sq. meters of land as excess vacant land in the hands of Bhikhabhai by the order dated 21.12.82. After waiting for reasonable period, notification under section 10(1) was issued on 18.8.83 which was followed by notification under section 10(3) and notice under section 10(5) of

the said Act and final act of taking over the possession of the land in question in presence of panch witnesses on 21.5.85. Thus even when Bhikhabhai filed his appeal, the land in question had finally vested in the Government free from all encumbrances and possession thereof was also taken over. In any case, neither Bhikhabhai nor the petitioners challenged the order passed by the Tribunal while rejecting the appeal filed by Bhikhabhai by the order dated 23.7.86. The present petitioners, therefore could not have independently challenged the order passed by the Competent Authority on 21.12.82. If as heirs of deceased Bhikhabhai, they had any grievance about the order passed by the Tribunal, they were required to take appropriate steps to challenge the said order. Instead they preferred independent appeal which was not maintainable under law. Their stand that they had independent right, title and interest over the land in question was rightly not accepted by the Tribunal. If as co-parceners of Hindu Undivided Family, the petitioners had any right over the land in question, necessary declaration in this regard was required to be filed before the authorities under the said Act and responsible person ought to have filed form under

section 6(1) of the said Act. The stand that the land belonged to HUF was not backed by any material and was simply an afterthought.

7. In the result, I do not find any reason to interfere with the orders under challenge. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

(Akil Kureshi, J.)

(vjn)